APPENDIX

Chapter IV, Section I, Par. 25, Charter of the City of Tucson "The City shall have power:"

"(25) To lease to persons, firms or corporations for the purpose of maintenance, operation or use, any public utility owned or controlled by the City, and to provide for the leasing of any lands now or hereafter owned by the City, except lands donated, purchased, or used as public parks or playgrounds; provided, that any such leases shall be made only to the highest bidder therefor by ordinance duly adopted, and provided, further, that any and all bids for any such lease may be rejected at the discretion of the legislative body of the City; provided, that no public utility shall be purchased, leased, acquired, sold or in any manner disposed of, without the assent of a majority of the taxpayers, who must be qualified electors of the City, voting on the question at a general or special election at which such question may be submitted."

ARTICLE 26—Municipal Utility Bonds

(Arizona Code Annotated 1939, June 1945 Pocket Supplement)

"16-2601. Short Title.—This act may be cited as the Municipal Revenue Bond Act of 1943. (Laws 1943, ch. 31, sec. 1, p. 72.)"

"16-2602. Definitions.—In this act, unless the context otherwise requires:

'Municipality' means any incorporated city or town;

'Governing body' means the board, commission, or other body having charge of the financial affairs of a municipality;

'Bond' means any bond issued pursuant to this act;

'Utility undertaking' means any one or combination of the following: electric light or power, water, sewer, gas, garbage, or rubbish plant or system, together with all

parts thereof and appurtenances thereto, including, but not limited to, disposal, treatment, and reduction plants, buildings, incinerators, dams, and reservoirs. (Laws 1943, ch. 31, sec. 2, p. 72.)"

"16-2603. POWERS OF MUNICIPALITIES.—In addition to any powers it may now have a municipality shall have power: 1. subject to the requirements and restrictions of sections 16-604 and 16-605, Arizona Code of 1939 (sections 3 and 4, chapter 77, Session Laws of 1933, regular session), within or without its corporate limits, to construct, improve, reconstruct, extend, operate, maintain, and acquire, by gift, purchase, or the exercise of the right of eminent domain, any utility undertaking or part thereof, and acquire in like manner land, rights in land, or water rights in connection therewith; 2. to issue its bonds to finance the cost thereof, and, 3. to pledge to the punctual payment of the bonds and interest thereon an amount of the revenue of the utility undertaking, including improvements or extensions thereafter constructed or acquired, sufficient to pay the bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. The amount pledged may consist of all or any part of such revenue. The governing body of the municipality, in determining the cost of the utility undertaking for which bonds are to be issued, may include all costs and estimated costs of the issuance of the bonds, all engineering, inspection, fiscal, and legal expenses allowed by law, and interest which it is estimated will accrue on money borrowed or which will be borrowed during the construction period and for six (6) months thereafter. (Laws 1943, ch. 31, sec. 3, p. 72.)"

"16-2604. VOTE ON BOND ISSUES.—Questions of bond issues under this act shall be submitted to the real property taxpayers who are in all other respects qualified electors of the municipality. No bonds shall be issued without the assent of a majority of such qualified electors voting at an election held for that purpose, as provided in this act. (Laws 1943, ch. 31, sec. 4, p. 72.)"

"16-2605. ELECTION RESOLUTION.—(a) The governing body shall adopt an election resolution calling an election

upon the question of the issuance of bonds. Such resolution shall state in substance: 1. the maximum amount of bonds to be issued; 2. the purpose for which the bonds are to be issued; 3. the maximum rate of interest which the bonds are to bear; 4. a brief, concise statement (which need not include any detail other than the mere statement of the fact) showing that the bonds will be payable solely from revenues; 5. the date on which the election is to be held; 6. the places where votes may be cast; and, 7. the hours between which polling places will be open.

(b) The election resolution shall be published in full at least once, not less than fifteen (15) days nor more than thirty (30) days prior to the date of the election, in a newspaper published in the county and of general circulation in the municipality; or, if there be no such newspaper, the resolution shall be printed in full and posted in five (5) conspicuous places in the municipality not less than fifteen (15) days nor more than thirty (30) days prior to the date of the election. (Laws 1943, ch. 31, sec. 5, p. 72.)"

"16-2606. REGISTRATION.—The governing body may require the registration of all persons desiring to vote at the election, in which case the election resolution shall state the dates, times and places when and where such persons may register. Registration shall begin not less than ten (10) days, and shall close not less than five (5) days, prior to the date of the election. (Laws 1943, ch. 31, sec. 6, p. 72.)"

"16-2607. Ballots.—At the election the ballot shall contain the phrases 'For the Bonds' and 'Against the Bonds.' To the right of and opposite each of said phrases shall be placed a square, approximately the size of the squares placed opposite the names of candidates on ballots. The voter shall indicate his vote 'For the Bonds' or 'Against the Bonds' by inserting the mark 'X' in the square opposite such phrase. No other question, word, or figure need be printed on any ballot. The ballot need not be any particular size, nor need sample ballots be printed, posted, or distributed. A number of ballots, exceeding by not less

than ten (10) per cent the number of registered voters whose names appear on the precinct register of the precinct, town, or city for which printed, shall be printed for and furnished to each polling place. Voting machines shall not be used at any election held under this act. (Laws 1943, ch. 31, sec. 7, p. 72.)"

"16-2608. CANVASS OF RETURNS.—The governing body shall canvass the returns and determine and declare the result of the election. If it shall appear to the governing body that a majority of the qualified real property taxpayers voting thereon assent to the issuance of the bonds, the governing body shall provide for the issuance of such bonds. The determination of the governing body that a majority of the qualified real property taxpayers voting thereon have assented to the issuance of the bonds shall be conclusive in any suit, action, or proceeding involving the validity of such election or the determination or declaration of the result thereof instituted after the date of the delivery of and payment for such bonds. (Laws 1943, ch. 31, sec. 8, p. 72)".

"16-2609. APPLICATION OF ELECTION LAWS.—Except as otherwise provided in this act, the manner of conducting the registration and election, keeping the poll lists, the returns, declaring the results, and doing all acts relating to such election shall conform to the procedure provided by law for the registration and qualification of electors and the holding of special elections wherein the question of the issuance of the bonds of municipal corporations is submitted to an election. (Laws 1943, ch. 31, sec. 9, p. 72.)"

"16-2610. FORM OF BONDS.—Bonds issued under this act shall be fully negotiable within the meaning and for all purposes of chapter 52, Revised Code of 1939 (secs. 52-101—52-402). They may be in one or more series, may bear such dates, may be payable in such medium of payment, at such places, may carry such registration privileges, shall be executed in such manner, may contain such other terms, covenants and conditions, and be in such form, either coupon or registered, as the governing body may by resolution prescribe. They shall be payable in

equal annual instalments, or they shall be of such maturities that the amount required for the payment of interest and principal becoming due thereon each year will be substantially the same and in either case the final payment shall be due not more than thirty (30) years from the date of issuance, provided that the first instalment may be payable on such date as the governing body shall prescribe, not more than two (2) years from the date of issuance. Any or all of such bonds shall be callable at such times, on such terms and in such manner as the governing body by its resolution shall prescribe. Said bonds shall bear interest not exceeding five (5) per cent per annum, payable semi-annually, at the rate set by the accepted bid and shall be sold at not less than par to the one making the best bid therefor, and the governing body shall call for bids thereon by giving thirty (30) days' notice of such call by publication in a newspaper of general circulation within the county, which notice shall be in such form as shall be prescribed by the governing body. The bids shall be for the entire bond issue unless the governing body by resolution shall allow bidding therefor in parcels of less than the entire issue. Pending the preparation of the definitive bonds, interim receipts or certificates may be issued to the purchasers of said bonds in such form and with such provisions as the governing body may determine. (Laws 1943, ch. 31, sec. 10, p. 72; 1945, ch. 95, sec. 1, p. 241.)"

"16-2611. CHARGES FOR UTILITY UNDERTAKING.—The governing body of the municipality issuing the bonds shall prescribe charges, and shall revise the same whenever necessary, so that any utility undertaking for which the bonds were issued shall always remain self-supporting with revenue sufficient: 1. to pay when due all bonds, and interest thereon, for the payment of which the revenue shall have been pledged, encumbered, or charged; 2. to provide for all expenses of operation, maintenance, expansion and replacement of facilities, and, 3. to provide reasonable reserves for said purposes. Until the payment of all bonds on any such public utility issued hereunder and the expiration of the fiscal year of the municipality in which such bonds are paid in full, neither the receipts

nor expenditures in connection with the operation of such public utility shall be subject to the provisions of chapter 73, Arizona Code of 1939 as amended, nor shall such receipts and expenditures, until such time, be included in any budget covered by said chapter 73, Arizona Code of 1939, as amended, provided, that for the purposes of chapter 73, Arizona Code of 1939, as amended, the actual expenditures of any such public utility other than for bond interest and redemption during the fiscal year of the municipality preceding that in which such bonds were paid in full, shall be deemed to have been included in and to have constituted a part of the budget adopted by such municipality for the fiscal year in which such bonds were so paid. (Laws 1943, ch. 31, sec. 11, p. 72; 1945, ch. 95, sec. 2, p. 242.)"

"16-2612. COVENANTS IN RESOLUTION.—Any resolution pertaining to the issuance of bonds under this act may contain covenants as to: 1. the purpose to which the proceeds of sale of the bonds may be applied and to the use and disposition thereof; 2. the use and disposition of the revenue of the utility undertaking for which the bonds are to be issued; 3. the issuance of other or additional bonds, payable from the revenue of the utility undertaking; 4. the operation and maintenance of the utility undertaking; 5. the insurance to be carried thereon and the use and disposition of insurance moneys; 6. books of account and the inspection and audit thereof, and, 7. the terms and conditions upon which the holders of the bonds, or any proportion of them or any trustee therefor, shall be entitled to the appointment of a receiver, who may enter and take possession of the utility undertaking, operate and maintain the same, prescribe charges, and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the municipality itself might do. The provisions of this act and any such resolution shall be deemed a contract with the holders of the bonds, and the duties of the municipality and of its governing body and officers under this act and any such resolution shall be enforceable by mandamus or other appropriate action in any court of

competent jurisdiction. (Laws 1943, ch. 31, sec. 12, p. 72.)"

"16-2613. Disposition of Proceeds.—All proceeds received from the sale of the bonds, all fees, rents, tolls, or other charges received by the municipality from any utility undertaking financed by the bonds, and all moneys received from any source in connection therewith shall be paid to the financial officer of the municipality whom the governing body thereof shall designate for such purposes. The financial officer shall not commingle any money received under the terms of this act with any other moneys, but the moneys received under the terms of this act shall be deposited in a separate bank account in the name of the municipality. The governing body may by resolution provide that all deposits of such proceeds, fees, rents, tolls, or other charges, and such moneys received under the terms of this act, shall be secured by obligations of the United States or of this state of a market value equal at all times to the amount of the deposits hereunder, and all banks and trust companies are authorized to give such security for the deposits. (Laws 1943, ch. 31, sec. 13, p. 72.)"

"16-2614. Validity of Bonds.—Bonds issued under this act and bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality issuing the same. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction, acquisiton, improvement, reconstruction, or extension of the utility undertaking financed by the bonds or taken in connection therewith. (Laws 1943, ch. 31, sec. 14, p. 72.)"

"16-2615. Certification by Attorney-General.—Any municipality may submit to the attorney-general any bonds to be issued under this act after all proceedings for their issuance have been taken. Upon such submission, it shall be the duty of the attorney-general to ex-

amine into and pass upon the validity of the bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this act, and such bonds when delivered and paid for will constitute binding and legal obligations of the municipality according to the terms thereof, the attorney-general shall certify in substance upon the back of each of said bonds that it is issued in accordance with the constitution and laws of this state. (Laws 1943, ch. 31, sec. 15, p. 72.)"

"16-2616. Prior Lien of Bonds.—All bonds of the same issue under this act shall have a prior and paramount lien on the revenue of the utility undertaking for which the bonds have been issued over and ahead of all bonds of any issue payable from that revenue which may be subsequently authorized, and over and ahead of any claims or other obligations of any nature against that revenue subsequently arising or subsequently incurred. All bonds of the same issue under this act shall be equally and ratably secured, without priority by reason of number, date of bonds, sale, execution, or delivery, by a lien on the revenue in accordance with the terms of the resolution authorizing the bonds. (Laws 1943, ch. 31, sec. 16, p. 72.)"

"16-2617. Bonds Not Debt of Municipality.—No holder of any bonds issued under this act shall have the right to compel any exercise of the taxing power of the municipality to pay said bonds or the interest thereon. Each bond issued under this act shall recite in substance that the payment of said bond and the interest thereon is enforceable exclusively from the revenue pledged to its payment. Bonds issued under this act by any municipality shall not be a debt of the municipality, nor shall payment thereof be enforceable out of any funds other than the revenue pledged to the payment thereof. (Laws 1943, ch. 31, sec. 17, p. 72.)"

"16-2618. Supplemental Nature of Act.—In so far as the provisions of this act are inconsistent with any other provision of law, the provisions of this act shall be controlling. The powers conferred by this act shall be in addition and supplemetal to the powers conferred by any

other law. Except as herein expressly provided, the utility undertaking may be constructed, improved, reconstructed, extended, and acquired, notwithstanding that any other law may provide for the construction, improvement, reconstruction, extension, or acquisition of a like utility undertaking and without regard to the requirements, restrictions, or other provisions contained in any law, including, but not limited to, sections 16-602 and 16-603, Arizona Code of 1939 (sections 1 and 2, chapter 77, Session Laws of 1933, regular session). Bonds may be issued under this act for any utility undertaking, notwithstanding that any other law may provide for the issuance of bonds for a like purpose and without regard to the requirements, restrictions, or other provisions contained in any other law. (Laws 1943, ch. 31, sec. 18, p. 72.)"

"16-2619. BONDS VALIDATED.—All Bonds lawfully issued under the provisions of chapter 4, Session Laws of 1940, first special session, and chapter 107, Session Laws of 1941, regular session, are validated and confirmed. (Laws 1943, ch. 31, sec. 19, p. 72.)"

ARTICLE 9

EMINENT DOMAIN

(Arizona Code Annotated 1939)

"27-901. USES FOR WHICH MAY BE EXERCISED.—Subject to the provisions of this chapter (article), the right of eminent domain may be exercised by the state, a county, city or political subdivision, or by any person, for the following uses:

1. All public uses authorized by the government of the United States;

2. Buildings and grounds for any public use of the state and all other public uses authorized by the legislature;

3. Buildings and grounds for the public use of any county, city, town, or school districts; canals, aqueducts, flumes, ditches, or pipes, for conducting water for the use of the inhabitants or for drainage, of any county, city, village or town; raising the banks of streams, removing obstructions therefrom, and widening, deepening, or straightening their channels; roads, streets, and alleys, and all other public uses for the benefit of any county, city, village or town, or the inhabitants thereof, which may be authorized by the legislature; but the mode of apportioning and collecting the costs of such improvements, shall be such as may be provided in the law by which they are authorized;

4. Wharves, docks, piers, chutes, booms, ferries, bridges, toll-roads, by-roads, plank and turnpike roads and highways; steam, horse, electric and cable railroads or railways; telegraph and telephone lines and conduits for public communication; electric light and power transmission lines, pipe lines used for supplying gas to the public, and all transportation and transmission and intercommunication facilities of public service agencies; aviation fields, reservoirs, canals, ditches, flumes, aqueducts, and pipes, for the use of any county, city or village or its inhabitants, or for public transportation, supplying mines and other industrial enterprises and farms, and farm neighborhoods with water for irrigation, domestic, and other needful purposes for generating electricity; draining and reclaiming lands, and for floating logs and lumber on streams not navigable;

5. Roads, tunnels, ditches, flumes, pipes and dumping places for working mines; also outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines; also an occupancy in common by the owners or possessors of different mines, or any place for the flow, deposit, or conduct of tailings or refuse matter from their several mines;

6. By-roads leading from highways to residences and farms;

7. Private canals, ditches, flumes, aqueducts, and pipes for conducting water from natural water courses or bodies, or from public sources where the lands to be irrigated are not directly reached by such natural water course or public sources;

8. Pipe lines to carry petroleum, or any other liquid;

9. Rights-of-way, station grounds; pits, yards, side-tracks, and other necessary uses for steam and electric railways. (R. S. 1901, sec. 2445; Laws 1907, ch. 91, sec. 1, p. 168; 1912 (S. S.), ch. 73, sec. 1, p. 225; R. S. 1913, sec. 3072; rev., R. C. 1928, sec. 1329.)"

"27-902. Widening and Extension of Lateral Ditches.—Any person owning an interest in common with another person in any lateral ditch constructed and used for irrigating, mining, milling or other useful and lawful purpose, may widen, deepen, border up, or extend said lateral ditch by paying to his associates, and to the owner of the land through which said lateral ditch passes, a just compensation for any damages to the land, growing crop or crops, occasioned by widening, deepening, bordering up or extending said lateral ditch. A 'lateral ditch,' as referred to herein, is a private ditch leading out of a main ditch or any of its branches receiving water from a river or original source of supply. (R. S. 1901, secs. 2446, 2447; 1913, secs. 3073, 3074; cons. & rev., R. C. 1928, sec. 1330.)"

"27-903. Opening Fences.—It shall be lawful to open any fence in order to repair any public water ditch whenever it is necessary to use a team or vehicle in repair of same without consent of the owner of said fence; provided, however, that the said fence shall, on completion of the repair of said water ditch, be properly enclosed by the party so opening, and in a manner as nearly as possible as it was before opening, and that the party so opening said fence shall be liable for all damages that may occur by reason of said opening and entry. (R. S. 1901, sec. 2448; 1913, sec. 3075; rev., R. C. 1928, sec. 1331.)"

"27-904. PRIVATE WAY OF NECESSITY MAY BE CONDEMNED—DEFINED.—An owner or one entitled to the beneficial use of land, mines or mining claims and structures thereon, which is so situated with respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity over, across, through, and on said premises, may condemn and take lands of such other, sufficient in area for the construction and maintenance of such private way of necessity. The term 'private way of necessity' as used herein shall mean a right-of-way on, over, across, or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads, over-head transmission lines, pole lines, power lines, canals, ditches, flumes, pipe lines, drains and tramways for mining, milling, lumbering, agricultural, domestic or sanitary purposes. (Laws 1919, ch. 139, secs. 1, 2, p. 219; cons., R. C. 1928, sec. 1332; Laws 1929, ch. 25, sec. 1, p. 59.)"

"27-905. ESTATES SUBJECT TO CONDEMNATION.—The interests, estates and rights in lands subject to be taken for public use, are: A fee simple, when taken for public buildings or grounds or for permanent buildings, for use in connection with a right-of-way, or for an outlet for the flow or a place for the deposit of tailings from a mine or for irrigating ditches; an easement, when taken for any other use; a right of entry upon and occupation of lands, and the right to take therefrom such earth, gravel, stone, trees, and timber as are necessary for some public use; and use in the water of any stream, river or spring. (R. S. 1901, sec. 2449; 1913, sec. 3076; R. C. 1928, sec. 1333.)"

"27-906. PRIVATE PROPERTY THAT MAY BE CONDEMNED.—Private property which may be taken includes:

1. All real property belonging to any person, including any and all water and water rights for the irrigation of any land so condemned, belonging to or used in connection with such land for the irrigation thereof, with rights-of-way for the water or water rights so condemned through irrigating canals and ditches leading to such land;

2. Lands belonging to this state, or to any county, city, village or town, not appropriated to some public use;

3. Property appropriated to public use;

4. Franchises for toll roads, toll bridges, and ferries, and all other franchises; but such franchises shall not be taken unless for free highways, railroads, or other more necessary public use;

5. All rights-of-way through canyons, passes or defiles and all rights-of-way for any and all the purposes mentioned in subdivision 2, section 1329 (sec. 27-901), and any and all structures and improvements thereon, and the lands held or used in connection therewith, intersected by any other right-of-way or improvements or structures thereon. They shall also be subject to a limited use in common with the owner thereof, when necessary; but such uses, crossings, intersections, and connections shall be made in the manner most compatible with the greatest public benefit and least private injury;

6. All classes of private property not enumerated, including property for use in water or water rights, may be taken for public use, when such taking is authorized by law. (R. S. 1901, sec. 2450; Laws 1907, ch. 91, sec. 2, p. 168; R. S. 1913, sec. 3077; rev. R. C. 1928, sec. 1334.)"

"27-907. Uses for Which May Be Taken.—Before property can be taken, it must appear that the use to which it is to be applied is a use authorized by law; that the taking is necessary to such use; and, if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use. (R. S. 1901, sec. 2451; 1913, sec. 3078; R. C. 1928, sec. 1335.)"

"27-908. Entry and Survey of Property.—Where land is required for public use, the state, or its agents in charge of such use, may survey and locate the same; but it must be located in the manner which will be most compatible with the greatest public good and the least private injury.

The land may be entered to make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for injuries resulting from negligence, wantonness or malice. Any person seeking to acquire property for any of the uses authorized is an agent of the state, within the meaning of the term. (R. S. 1901, sec. 2452; 1913, sec. 3079; rev., R. C. 1928, sec. 1336.)"

"27-909. Action for Condemnation—Immediate Possession—Money Deposit.—All proceedings for condemnation must be brought in the superior court of the county in which the property is situated, in the same manner as other civil actions. The plaintiff may, at the time of filing his complaint, or any time thereafter, make application to the court for an order permitting him to take possession of, and use the property sought to be condemned for the purpose as prayed for. Upon the filing of such application, a time for the hearing thereof shall be fixed, and notice thereof served upon the parties in interest by personal service within the state, or by publication if without the state, in such manner as the court may direct. On the day of such hearing, if it appear that the use for which the property is sought to be condemned is a necessary use, the court shall receive evidence as to the probable damages to each owner, possessor or person having an interest in each parcel of land sought to be condemned; and may direct that, upon a deposit of money in double the amount of the probable damages so found to each person in interest, the plaintiff shall be let into the possession and full use of the parcels of land as described in such order, for the purposes herein specified. Moneys so paid shall be deposited with the clerk of the court, and be by him held to the use and benefit of each person having an interest in each parcel of land sought to be condemned, subject to final judgment upon the trial of the action, and also as a fund to pay any further damages and costs recovered in said proceedings, as well as all damages sustained by the defendant if for any cause the property be not finally taken for public use. The deposit of said money shall not discharge the plaintiff from liability to maintain said fund in full, but it shall remain as to all accidents, defalcations or other contingencies, as

between the parties to the proceedings, deposited at the risk of the plaintiff until the compensation or damage is finally settled by judicial determination, and the court awards such part thereof as shall be determined upon, to the defendant, or until the clerk is ordered by the court to disburse it. The clerk of the court shall be liable to the plaintiff for such deposit, if lost or abstracted. The court may order the money deposited in the state treasury, and the treasurer shall receive such money, receipt for and safely keep the same in a special fund, to be entered on his books as a condemnation fund, and for such duty he shall be liable to plaintiff. The state treasurer shall pay out such money so deposited as the court may direct. The parties may stipulate as to the amount of deposit, or for a bond from the plaintiff in lieu of a deposit. Such stipulation, or evidence of such deposit, shall not be introduced in evidence, or used to the prejudice of any party in interest on the trial of said action. (R. S. 1901, sec. 2453; Laws 1909, ch. 8, sec. 1, p. 9; R. S. 1913, sec. 3080; rev., R. C. 1928, sec. 1337.)"

"27-910. COMPLAINT—Contents.—The complaint must contain: The name of the person in charge of the public use for which the property is sought, or plaintiff; the names of all owners and claimants of the property, if known, or a statement that they are unknown, as defendants; a statement of the right of the plaintiff; if a right-of-way for any road, ditch, canal or other purpose be sought, the location and general route, accompanied with a map thereof; and a description of each piece of land sought to be taken, and whether the same includes the whole or only a part of an entire parcel or tract. (R. S. 1901, sec. 2454; 1913, sec. 3082; rev., R. C. 1928, sec. 1338.)"

"27-911. JOINT OR SEPARATE ACTIONS—CONSOLIDATION.—All parcels lying in the county, and required for the same public use, may be included in the same or separate proceedings, at the option of the plaintiff, but the court may consolidate or separate them to the convenience of parties. When application for the condemnation of a right-of-way for the purpose of sewerage, or to obtain water,

is made on behalf of a settlement or of an incorporated or unincorporated village or town, the board of supervisors of the county may be named as plaintiffs. (R. S. 1901, sec. 2455; 1913, sec. 3083; R. C. 1928, sec. 1339.)

"27-912. SUMMONS.—The clerk must issue a summons, containing the names of the parties, a general description of the whole property, a statement of the public use for which it is sought, a reference to the complaint for descriptions of the respective parcels, and a notice to the defendants to appear and show cause why the property described should not be condemned as prayed for in the complaint. In all other particulars it must be in the form of a summons in civil actions, and must be served in like manner. (R. S. 1901, sec. 2456; 1913, sec. 3084; R. C. 1928, sec. 1340.)"

"27-913. PERSON IN INTEREST MAY DEFEND.—All persons in occupation of, or having or claiming an interest in any of the property described in the complaint, or in the damages for the taking thereof, though not named, may appear, plead and defend each in respect to his own property or interest, or that claimed by him, as if named in the complaint. (R. S. 1901, sec. 2457; 1913, sec. 3085; R. C. 1928, sec. 1341.)"

"27-914. POWERS OF COURT.—The court may regulate and determine the place and manner of making connection and crossings or of enjoying the common use mentioned in the fifth subdivision of section 1329 (sec. 27-901); hear and determine all adverse or conflicting claims to the property sought to be condemned and to the damages therefor; and determine the respective rights of different parties seeking condemnation of the same property. (R. S. 1901, Sec. 2458; 1913, sec. 3086; R. C. 1928, sec. 1342.)"

"27-915. VALUE, DAMAGES, AND BENEFITS TO BE FOUND.—The Court or jury shall ascertain and assess:

1. The value of the property sought to be condemned and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein;

if it consist of different parcels, the value of each parcel and each estate or interest therein shall be separately assessed;

2. If the property sought to be condemned constitute only a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff;

3. Separately, how much the portion not sought to be condemned and each estate or interest therein will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit be equal to the damages assessed, under subdivision two of this section, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value;

4. If the property sought to be condemned be for a railroad, the cost of good and sufficient fences along the line of such railroad, and the cost of cattle guards where fences may cross the line of such railroad. As far as practicable, compensation must be assessed for each source of damage separately. (R. S. 1901, sec. 2459; 1913, sec. 3087; rev., R. C. 1928, sec. 1343.)"

"27-916. Damages and Value Fixed from Date of Summons.—For the purpose of assessing compensation and damages, the right thereto shall be deemed to have accrued at the date of the summons, and its actual value at that date shall be the measure of compensation and damages. If an order be made letting the plaintiff into possession prior to final judgment, the compensation and damages awarded shall draw legal interest from the date of such order. No improvements placed upon the property subsequent to the date of service of summons shall be included in the assessment of compensation or dam-

ages. (R. S. 1901, sec. 2460; 1913, sec. 3088; rev., R. C. 1928, sec. 1344.)"

"27-917. PAYMENT OF DAMAGES—FENCES AND CATTLE GUARDS.—The plaintiff must, within thirty (30) days after final judgment, pay the sum assessed; but may, before payment, elect to build fences and cattle guards. If the plaintiff so elect, he shall execute to the defendant a bond, with sureties to be approved by the court, in double the assessed cost of the same, to build such fences and cattle guards within eighteen (18) months from the time the railroad is built on the land taken, and if such bond be given, need not pay the cost of such fences and cattle guards to defendant. In an action on such bond reasonable attorney's fees, in addition to all damages, may be recovered. (R. S. 1901, sec. 2462; 1913, sec. 3090; R. C. 1928, sec. 1345.)"

"27-918. EXECUTION—VACATING DECREE FOR NONPAYMENT.—Payment may be made to defendants entitled thereto, or the money may be deposited in court for the defendants, and be distributed to those entitled thereto. If the money be not so paid or deposited, the defendants may have execution as in civil actions; and if the money can not be made on execution, the court, upon a showing to that effect, must set aside and annul the entire proceedings, and restore possession of the property to the defendant, if possession has been taken by the plaintiff. (R. S. 1901, sec. 2463; 1913, sec. 3091; R. C. 1928, sec. 1346.)"

"27-919. FINAL ORDER AFTER PAYMENT.—When the final judgment has been satisfied, the court must make a final order of condemnation, describing the property condemned and the purposes of such condemnation. A copy of the order must be filed in the office of the recorder of the county, and thereupon the property described shall vest in the plaintiff for the purposes therein specified. (R. S. 1901, sec. 2464; 1913, sec. 3092; rev., R. C. 1928, sec. 1347.)

"27-920. POSSESSION—PENDING APPEAL OR AFTER PAYMENT OF JUDGMENT—DISPOSITION OF MONEY PAID INTO

COURT—COSTS OF SECOND TRIAL.—At any time after judgment is entered, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff has paid into court, for the defendant, the full amount of the judgment, and such further sum as required by the court as a fund to pay further damages and costs that may be recovered in said proceedings, as well as all damages that may be sustained by the defendant, if for any cause the property shall not be finally taken for public use, the superior court in which the proceeding was tried, may upon notice of not less than ten (10) days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property until the final conclusion of the litigation, and may, if necessary stay all actions and proceedings against the plaintiff on account thereof. The defendant who is entitled to the money paid into court for him upon any judgment may demand and receive the same at any time thereafter upon an order of the court. The court shall, upon application, order the money so paid into court for him delivered to him upon his filing a satisfaction of the judgment, or upon his filing a receipt therefor, and an abandonment of all defenses to the action or proceeding except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted, and such payment shall be deemed an abandonment of all defenses, except his claim for greater compensation. The money paid into court on final judgment may be placed by order of court in the custody of the clerk or state treasurer, to be held or disbursed upon order of court, and the plaintiff and said officers shall be subject to the same responsibility, liabilities and restrictions with respect thereto as heretofore provided in the case of money paid into court by plaintiff upon application for possession before trial. Where a new trial has been granted upon the application of the defendant, and he has failed upon such trial to obtain greater compensation than was allowed him upon the first trial, the costs of such new trial shall be taxed against him. (R. S. 1901, sec. 2465; 1913, sec. 3095; rev., R. C. 1928, sec. 1348.)

"27-921. COSTS.—Costs may be allowed or not, and, if

allowed, may be apportioned between the parties on the same or adverse sides, in the discretion of the court; provided, that in any action for the condemnation of property by or on behalf of any educational, reformatory, or penal institution of the state, if the board or officers having charge of such institution, shall, prior to the commencement of such action or proceeding, tender to the owner of the property, such sum of money as such board or officers deem the reasonable value thereof, and such owner refuses to accept the same and transfer the property, then all costs and expenses of such action or proceeding shall be taxed against such owner, unless the sum of money assessed in the judgment as the value of such property and compensation to be paid therefor is greater than the amount so tendered. (R. S. 1901, sec. 2466; Laws 1907, ch. 91, sec. 3, p. 168; R. S. 1913, sec. 3094; rev., R. C. 1928, sec. 1349.)"

ARIZONA CODE ANNOTATED 1939

"16-604. PUBLIC UTILITIES UNDER EXISTING FRANCHISE—PURCHASE BY MUNICIPALITY.—Where a municipal corporation and the citizens thereof are being served under an existing franchise by any public utility, such municipal corporation, before constructing, purchasing, acquiring or leasing, in whole or in part, any plant or property devoted to the business of or services rendered by such public utility, shall first purchase and take over the property and plant of such public utility. The said property and plant shall become the property of the municipal corporation in the event of and upon the payment by the municipal corporation of the fair valuation thereof, within eighteen (18) months after the determination of such valuation in the manner hereinafter provided. The fair valuation of such public utility shall be the equivalent of the compensation to be paid for the taking of private property for public use under the provisions of chapter 23, Revised Code of 1928 (Secs. 27-901–27-921), and such amount shall be determined by one of the following methods:

1. By agreement between the municipal corporation and the public utility;

2. By arbitrators to be chosen in such manner as may be agreed upon at the time by the municipal corporation and the public utility; or,

3. By a court of competent jurisdiction, sitting to ascertain the compensation for the taking of private property for public use under the provisions of chapter 23, Revised Code of 1928 (Secs. 27-901–27-921).

Both the municipal corporation and the public utility shall have full rights of appeal, as provided by said chapter 23 (Secs. 27-901–27-921). (Laws 1933, ch. 77, Sec. 3, p. 313.)

CONSTITUTION, STATE OF ARIZONA

(Section 4, Art. 2)

"Section 4—(RIGHT TO LIFE, LIBERTY, PROPERTY)—No person shall be deprived of life, liberty, or property without due process of law".

CONSTITUTION, STATE OF ARIZONA

(A. C. A. 1939, page 73)

(Sec. 17 of Art. 2)

"Section 17. (EMINENT DOMAIN.)—Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed

by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public."

CONSTITUTION OF THE UNITED STATES

(Section 1 of Article 14)

"CITIZENSHIP—DUE PROCESS OF LAW—EQUAL PROTECTION.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."